UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MOISES MENDEZ,	:	
Plaintiff,	:	08-CIV-4967 (CM) (KNF)
v.	:	**ECF CASE**
STARWOOD HOTELS AND RESORTS WORLDWIDE, INC.,	:	
Defendant.	:	

MEMORANDUM OF LAW
IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

Statutes

Defendant, Starwood Hotels and Resorts Worldwide, Inc. ("*Starwood*") submits this Memorandum of Law in support of its motion pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure and the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. to dismiss the above-referenced action and to compel arbitration of the claims asserted therein.

STATEMENT OF FACTS

This action was commenced by the filing of a complaint on May 29, 2008. The Complaint alleges that Plaintiff Moises Mendez was subjected to discrimination, harassment and retaliation in connection with his employment allegedly based on his race, national origin and disability. Claims for relief are asserted under federal anti-discrimination law, the Human Rights Law of the City and State of New York, and for the tort of negligent supervision.

At all relevant times, Plaintiff was employed by Starwood and assigned to one of its hotels called The Westin New York at Times Square (the "*Westin Hotel*"). (Compl. ¶ 6.) Hired in June 2003 as a "Food Runner," Plaintiff was later assigned to the position of "Baker" at the Westin Hotel. (Compl. ¶ 17.) In connection with his assignment to the Baker position, Plaintiff was presented an offer letter dated April 7, 2004 (Declaration of Michael Starr, dated June 27, 2008 at ¶ 3 and Exhibit A thereto). Plaintiff "ACCEPTED AND AGREED TO" the terms of that offer letter on April 13, 2004. (*Id.*) The April 7, 2004 offer letter contained a provision for arbitration which reads in its entirety as follows:

> "***Resolution of Disputes:*** In the event of any disputes with respect to your employment by Starwood, you and the Company agree that the same will be resolved through binding arbitration in the jurisdiction of the Company's headquarters and in accordance with the rules and procedures of the American Arbitration Association." (Emphasis in original.)

ARGUMENT

It is well-settled law that federal courts must compel arbitration where the parties have agreed to submit their claims to arbitration, even when those disputes raise claims under the employment discrimination statutes of the United States. *See Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991); *Oldroyd v. Elmira Savings Bank*, 134 F.3d 72, 79 (2d Cir. 1998). The rule is the same with respect to Plaintiff's state law claims. *See, e.g., Perry v. New York Law School*, No. 03 Civ. 9221 (GBH), 2004 WL 1698622, at *4 (S.D.N.Y. July 28, 2004); *Ciago v. Ameriquest MortgageCo.*, 295 F. Supp.2d 324, 334 (S.D.N.Y. 2003); *Fletcher v. Kidder, Peabody & Co.*, 81 N.Y.2d 623, 630-31 (1993). Moreover, where as here, all of the issues asserted in the complaint must be submitted to arbitration, the Court may dismiss the action in its entirety with prejudice. *Spencer-Franklin v. Citigroup/Citibank N.A.*, No. 06 Civ. 3475 (GWG), 2007 WL 521295, at *4 (S.D.N.Y. Feb. 21, 2007) (citing cases); *see also, Rubin v. Sona Int'l Corp.*, 457 F. Supp.2d 191, 198 (S.D.N.Y. 2006).

Accordingly, since Plaintiff has agreed to submit "any disputes" that he has "with respect to [his] employment by Starwood" to final and binding arbitration under the procedures of the American Arbitration Association, the instant Complaint must be dismissed and arbitration compelled for all claims asserted therein.

Dated: New York, New York
June 27, 2008

HOGAN & HARTSON LLP

By: /s/

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